

## **Exhibit A**

**Werkheiser, Gregory**

**From:** Werkheiser, Gregory  
**Sent:** Wednesday, September 20, 2006 12:29 PM  
**To:** 'Robert K Alber'  
**Cc:** 'Barry Gold - Mark Minuti, ESQ'; 'TB&F - Susan Balaschak, ESQ'; 'TB&F - Ronald Sussman, ESQ'; 'TB&F - James Garrity, ESQ'; 'Barry Gold - G. David Dean, ESQ'; 'TB&F - Paul Traub, ESQ'; 'U.S. Trustee - Mark S. Kenney'; 'TB&F - Fredrick B. Rosner, ESQ'; Abbott, Derek; Dehney, Robert  
**Subject:** Alber v. Traub, Bonacquist & Fox LLP, et al., Civil Action Nos. 05-830(KAJ) and 05-831(KAJ)  
**Importance:** High

Mr. Alber,

I write concerning the two scheduling orders recently entered by the Delaware District Court in your appeal, Civil Action No. 05-0830 (KAJ) (the "Alber Appeal"), and the cross-appeal of Morris, Nichols, Arsh & Tunnell LLP ("Morris Nichols"), Civil Action No. 05-831 (KAJ) (the "MNAT Cross-Appeal"). Copies of the scheduling orders are attached for your reference.

Both scheduling orders provide: "[A]ppellant's opening brief shall be filed on or before September 27, 2006; appellees' answering brief shall be filed on or before October 11, 2006; and appellant's reply brief shall be filed on or before October 18, 2006."

It is clear to us that you are the "appellant" referred to in the scheduling order for the Alber Appeal; however, it is not clear whether the Court was referring to you or to Morris Nichols as the "appellant" in the scheduling order for the MNAT Cross-Appeal.

In any event, the scheduling order for the MNAT Cross-Appeal is inconsistent with Bankruptcy Rule 8009(a) to the extent that it is read to require Morris Nichols to present issues and argument related to the MNAT-Cross Appeal at that the same time you are filing your opening brief in the Alber Appeal. In describing the duties of an appellee to file an answering brief within 15 days after the appellant files its opening brief, Bankruptcy Rule 8009(a)(2) provides: "If the appellee has filed a cross appeal, the [answering] brief of the appellee shall contain the issues and argument pertinent to the cross appeal, denominated as such, and the response to the brief of the appellant."

Additionally, Bankruptcy Rule 8009(a)(3) provides: "[I]f the appellee has cross-appealed, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross appeal within 10 days after service of the reply brief of the appellant." We believe that the scheduling order should recognize Morris Nichols' right to file a reply brief in support of the MNAT Cross-Appeal.

We believe that the Court did not intend by the scheduling orders to modify the normal order of briefing in appeals such as these where a cross-appeal is pending or to eliminate Morris Nichols' right to file a reply brief in support of the MNAT Cross-Appeal. Accordingly, Morris Nichols intends to seek clarification from the Court of the scheduling orders' meaning insofar as they relate to the MNAT Cross-Appeal.

We believe that this should not be a controversial issue and therefore request that you consent to the clarification of the scheduling orders as set forth above. Please notify us by 2:00 p.m. (Eastern Time) tomorrow, Thursday, September 21, 2006, whether you consent to the clarification of the scheduling orders in the manner described above. Thank you.

Gregory W. Werkheiser  
 MORRIS, NICHOLS, ARSH & TUNNELL LLP  
 Chase Manhattan Centre, 18th Floor  
 1201 North Market Street  
 P.O. Box 1347  
 Wilmington, DE 19899-1347

Main: 302.658.9200  
 Direct Dial: 302.351.9229  
 Fax: 302.425.4663

Please note that effective as of January 1, 2006, my direct dial telephone number changed from 302.575.7229 to 302.351.9229. Our main telephone number and my fax number have not changed. Thank you.

M | N | A | T |



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Tracking:	Recipient	Delivery
	'Robert K Alber'	
	'Barry Gold - Mark Minuti, ESQ'	
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	'Barry Gold - G. David Dean, ESQ'	
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	'TB&F - Fredrick B. Rosner, ESQ'	
	Abbott, Derek	Delivered: 9/20/2006 12:29 PM
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**Werkheiser, Gregory**

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**From:** Robert K Alber [condo28@mail.com]  
**Sent:** Wednesday, September 20, 2006 6:27 PM  
**To:** Werkheiser, Gregory  
**Subject:** Read: Alber v. Traub, Bonacquist & Fox LLP, et al., Civil Action Nos. 05-830(KAJ) and 05-831 (KAJ)  
  
**Importance:** High



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Your message

To: Robert K Alber  
Cc: Barry Gold - Mark Minuti, ESQ; TB&F - Susan Balaschak, ESQ; TB&F - Ronald Sussman, ESQ; TB&F - James Garrity, ESQ; Barry Gol...  
Subject: 9/20/2006 9:28 AM

was read on 9/20/2006 3:27 PM.